IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 163 OF 2005

State through Public Prosecutor,
Panaji, Goa. ... Appellant

versus

Shri Francisco Medeira,
Raia, Salcete, Goa. ... Respondent

Mr. S. N. Sardessai, Public Prosecutor for the Appellant.

CORAM : N. A. BRITTO, J.

DATE : 17TH AUGUST, 2005.

P.C.:-

Heard Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the Appellant. For the view to be taken, notice to Respondent/Accused No.1 is dispensed with.

The State has sought Leave to Appeal contending that the Respondent/Accused No.1 was acquitted under Section 325 I.P.C.

Some brief facts are required to be stated to dispose of the said application for Leave to Appeal.

The State had prosecuted two accused including Respondent No.1/A-1 in C.C.No.95/S/2001 under Sections 325, 504, 506(ii) r/w 34 I.P.C. The learned Judicial Magistrate, First Class at Margao by her Judgment and Order dated 28-1-2003 convicted the Respondent/Accused No.1 under Section 325 I.P.C. alone and sentenced him to undergo R.I. for one year and to pay fine of Rs.3000/-. The aforesaid Accused was acquitted for other offences and so was A-2 for all offences.

The said Accused No.1, now Respondent No.1 before this Court, preferred an Appeal before the Court of Sessions, Margao and the learned Additional Sessions Judge by his Judgment and Order dated 2-3-2005 scaled down the conviction of the said Accused from Section 325 I.P.C. to Section 323 I.P.C. and also reduced the sentence. Accused No.1 has now been ordered to pay a fine of Rs.1000/- in default to undergo S.I. for one month.

The question before the Court is whether the learned Additional Sessions Judge was justified in scaling down the conviction of Accused No.1 from Section 325 I.P.C. to Section 323 I.P.C.

The allegation against the aforesaid Accused was that he had thrown or pelted a stone from a close distance which landed on his left eye

and which resulted into a bleeding injury, as stated by the said Complainant before the learned Judicial Magistrate, First Class. It appears that the learned Judicial Magistrate, First Class who convicted the said Accused No.1 under Section 325 was influenced by the opinion given by two Medical Officers, namely, P.W.8, Dr. A. N. Jaiswal and P.W.7, Dr. Pradeep Naik to the effect that the injury on the left eye of the Complainant was grievous in nature. At the time of hearing of arguments, Mr. Sardessai, the learned Public Prosecutor has submitted that the case is covered by the definition given in Section 320 I.P.C., namely, that in this case there has been permanent privation of the sight of either eye. The learned Additional Sessions Judge was right in concluding that the opinion expressed by the doctors would be insufficient to hold that the injury was grievous unless the case fell under the definition of grievous hurt as given in Section 320 I.P.C. The word "privation" has come to be undestood as loss or absence, and, as can be seen in Clause Secondly of Section 320 I.P.C. that has got to be on a permanent basis. The Complainant himself did not state in his evidence before the Court that he was unable to see with his left eye on account of the throwing of the stone by the Accused No.1; neither did P.W.8, Dr. Jaiswal who had immediately examined the said Complainant at Hospicio Hospital. It was also not the case of Dr. Pradeep Naik that the said Complainant on account of the throwing of the stone had lost the sight of the left eye. In the circumstances, therefore, the scaling down of the

conviction from Section 325 I.P.C. to Section 323 I.P.C. by the learned Additional Sessions Judge could not be altered.

Hence, application for Leave to Appeal is hereby rejected.

N. A. BRITTO, J.

RD.